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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

TIMOTHY BROSNAN, an individual;
CARLA BROSNAN, an individual;

Plaintiff,

vs.

DRY CLEANING STATION, INC.,
a corporation; JOHN A. CAMPBELL, an
individual; does 1 Through 50, Inclusive

Defendants.

Case No. CV 08 2028 (EDL)

Assigned For All Purposes:
Elizabeth D. Laporte

**DEFENDANTS' REPLY MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION TO
DISMISS**

DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THEIR MOTION TO DISMISS

PAGE 1

TIMOTHY BROSNAN/CARLA BROSNAN vs. DRY CLEANING STATION, INC., ET AL.

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS DRY CLEANING STATION, INC.
AND JOHN A CAMPBELL'S MOTION TO DISMISS**

DRY CLEANING STATION, INC. and JOHN A. CAMPBELL (collectively, "DCS") respectfully submit this Reply Memorandum of Points and Authorities in support of their Motion To Dismiss Plaintiffs BROSNANS' Complaint in the above-referenced matter.

I. PLAINTIFFS' FAILURE TO MEDIATE PRIOR TO FILING SUIT WARRANTS DISMISSAL OF THEIR CLAIMS.

The issue before the Court is no longer whether mediation is required under the Franchise Agreement, but whether this case should be stayed or dismissed while the parties pursue mediation. Plaintiffs' belatedly concede that "all parties agree that mediation should take place", but request the Court stay this case, instead of dismissing it. *p. 2, ll. 4-5, Pltf. Memo.* They claim they "are entitled to mediate this matter without dismissing their complaint." *Id. @ p. 6.* They further claim they "should not be forced to pay for re-filing another complaint when the first one was proper and asserted legitimate causes of actions against Defendants." *Id.*

There is no support for these positions in the Franchise Agreement. The Franchise Agreement explicitly states that:

. . . the Company [DCS] and the Franchisee each agree to enter into mediation of all disputes involving this Agreement or any other aspect of the relationship, for a minimum of four (4) hours, ***prior to initiating any legal action against the other.***

Pltf. Compl. Ex. A @ Art. 20.2(A). (emp. add).¹

¹ Plaintiffs also argue that only their breach of contract claim is subject to mediation. The Franchise Agreement is clear on this point. It states that "all disputes involving this Agreement **or** any other aspect of the

To now concede after they commenced this lawsuit that mediation is required, but still cling to it through their stay request, is both logically inconsistent and in complete contravention of the plain language of the agreement between the parties. The parties signed a contract and the Court should uphold it. To the extent plaintiffs are inconvenienced (however slightly) or incur additional costs by having to re-file, it was caused not by defendants, or by the Court in dismissing the complaint, but by their own actions in failing to comply with their agreement.

A final reason exists for why the Court should dismiss this case rather than stay it—this Court lacks jurisdiction. Article 20.2(B) of the Franchise Agreement requires that all disputes be arbitrated, not litigated. *Pltf. Compl. Ex. A @ Art. 20.2(B)*. If the parties do not settle at mediation, plaintiffs’ recourse is not to continue with this lawsuit, but to commence arbitration per the requirements imposed by the Franchise Agreement. Thus, plaintiffs will be not be forced to re-file another complaint with this Court following dismissal of this action. Rather, if the case remains pending during mediation, the Court will only be delaying the inevitable dismissal of the complaint in favor of arbitration following conclusion of the mediation. Staying the case will only clog this Court’s calendar with an action that will lay dormant while the parties pursue alternative dispute resolutions they contractually committed to take. Under these circumstances, staying the case, rather than dismissing it, makes no sense.

III. DCS IS ENTITLED TO ITS ATTORNEYS’ FEES AND COSTS IN SEEKING THIS DISMISSAL.

Article 20 of the Franchise Agreement is clear in that if either party fails to first seek mediation prior to bringing an action, “then upon petition of whichever party has a lawsuit . . .

relationship” are subject to mediation prior to any legal proceedings being brought. *Pltf. Compl. Ex. A @ Art. 20.2(A)*. (*emp. add.*)

DEFENDANTS’ REPLY MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THEIR MOTION TO DISMISS

PAGE 3

TIMOTHY BROSAN/CARLA BROSAN vs. DRY CLEANING STATION, INC., ET AL.

1 brought against it, the court . . . will dismiss the litigation . . . , and award attorneys' fees and
 2 costs to the party seeking dismissal in an amount equal to the attorneys' fees and costs the party
 3 seeking dismissal incurred." *Pltf. Compl. Ex. A @ Art. 20.2(A)(6)*. Plaintiffs now readily
 4 concede the applicability of the mediation requirement and further concede they made no
 5 attempt to even request mediation prior to bringing this lawsuit. Having conceded they did not
 6 comply with their contractual obligations, plaintiffs must also concede they are liable for the
 7 consequences — their responsibility for defendants' attorneys fees, which plaintiffs agreed in
 8 Article 20 the Court should now award.

10 Article 20.2(A) of the Franchise Agreement does not require that defendants agree to
 11 mediate under the condition that the lawsuit remain pending. But, this is exactly the condition
 12 plaintiffs are trying to impose. Because of their failure to request mediation and their
 13 subsequent failure to dismiss this lawsuit after conceding the applicability of the mediation
 14 provision, DCS requests leave of Court to document its attorneys' fees and costs incurred in
 15 preparing, bringing and arguing this motion, as specifically provided in the agreement between
 16 the parties.

17 WOLFGANG F. HAHN + ASSOCIATES

19 Dated: 19 May 2008

20 By: /s/
 21 WOLFGANG F. HAHN
 22 Attorney for Defendants
 23 DRY CLEANING STATION, INC.
 24 and JOHN A CAMPBELL

25 DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES
 26 IN SUPPORT OF THEIR MOTION TO DISMISS

PAGE 4

27 TIMOTHY BROSAN/CARLA BROSAN vs. DRY CLEANING STATION, INC., ET AL.
 28